

Newsletter



Robinson Sheppard Shapiro
Avocats • Lawyers

July 3, 2019

A Snapshot of our Recent Activity — Insurance Law

RSS is one of the leading insurance law teams in Eastern Canada, comprised of 40 lawyers, two of which are full time research lawyers, and three paralegals, to better fulfill our clients' needs. Our two satellite offices in Saguenay and Saint-Jérôme provide impeccable service to clients in those regions. Our Insurance Law Practice Group's activities — involving coverage, liability and recovery teams — reflect the vitality of people focused on exceeding clients' expectations while providing a stimulating environment for young lawyers.

Cases

To clients, all cases are important. We live by the same rule: all of our clients' cases are important. Whether it consists of successfully defending a retail chain against a claim by a customer who fell in one of its stores, or defending an importer and distributor of frozen fruits against a class action following the sale of fruits that allegedly caused contamination, our recent activity before the courts illustrates the breadth of our experience.

The Million-dollar Circle

Successfully defended a law firm against a \$55-million professional liability claim, a case that ended before the Supreme Court in *Brunette v. Legault Joly Thiffault, s.e.n.c.r.l.*, 2018 SCC 55, which

confirmed plaintiff's lack of legal standing. **Katherine Delage, Nick Krnjevic, Ann-Julie Auclair.**

Defending a real estate promoter and a general contractor against a \$4M claim for latent defects in a building. **Pierre Brossoit.**

Defending an insurer involved in an \$11M claim for alleged defects in the construction of a monastery. **Marcel-Olivier Nadeau, Jean-Philippe Savoie.**

Defending an insurer involved in a claim for \$2.4M for defects in the construction of an industrial building. **Marcel-Olivier Nadeau.**

Advising insurers in respect of the \$17B tobacco ruling issued by the Quebec

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Court of Appeal against cigarette manufacturers. **Michel Green, Nick Krnjevic.**

Defending an insurer against nine-figure claims for coverage for latent, long-term, progressive environmental damage that will give rise to the first ruling on all-sums allocation issues in Quebec.

Benoît G. Bourgon, Nick Krnjevic.

Advising insurers in respect of the billion-dollar opioids class action litigation.

Nick Krnjevic.

Defending the seller of a product against a claim for \$10M arising from bodily injury. **Patrick Henry.**

Defending a company in a \$10M product liability case. **Patrick Henry.**

Defending a construction company against a \$44M claim arising from a fire.

Patrick Henry.

Defending various engineering advising firms in malpractice claims ranging from \$6M to \$22M. **Patrick Henry.**

Defending an insurer in a \$5.7M construction defects claim in the context of a denial of coverage. **Michel Green, Jennifer Hansen.**

Defending two major insurers in the context of a \$17.8M complex litigation involving alleged construction defects in a condo building. Coverage issue.

Michel Green, Jennifer Hansen.

Defending an American manufacturer in the context of a \$6.3M litigation involving an alleged exposure to radiation during the course of employment.

Michel Green, Jennifer Hansen.

Defending the owner of an entertainment venue in the context of a \$1.6M litigation pertaining to bodily injury sustained by plaintiff during an event at the client's establishment while the premises were rented to the plaintiff's employer. **Michel Green, Jennifer Hansen.**

Defending a Montreal entertainment establishment in the context of a \$5.6M claim pertaining to bodily injury allegedly suffered by plaintiff as a result of an altercation with security personnel.

Michel Green, Jennifer Hansen.

Defending an attorney in the context of a \$2M claim resulting from alleged abuse of proceedings. **Katherine Delage, Jennifer Hansen, Ann-Julie Auclair.**

Katherine Delage, Jennifer Hansen, Ann-Julie Auclair.

Representing certain Lloyd's underwriters acting on behalf of a subcontractor in a \$5M claim based on alleged construction defects in the building of Polytechnique Montréal. **Benoît Chartier, Ariane Légère-Bordeleau.**

Defending certain Lloyd's underwriters that had insured a major engineering firm involved in the planning and construction of Inukjuak airport, in Nunavik, allegedly affected by latent defects.

Claim of over \$8M against various parties, including our clients. **Benoît Chartier.**

Benoît Chartier.

Defending the vendor and distributor of a sliding glass door system that allegedly shattered, causing deep lacerations and other important wounds to an Americana dentist vacationing in Quebec, now claiming over \$7M in pecuniary and non-pecuniary losses. **Benoît Chartier.**

Class Actions

Successfully opposed a demand for a class action against a municipality by which plaintiff was seeking \$3M in compensation for residents, alleging that the defendant misused these funds in lawsuits against four citizens. The Court of Appeal recently confirmed this victory. **Benoît G. Bourgon, Ann-Julie Auclair, Frédéric Savard-Scott, Jeanine Guindi.**



Defending the Autorité régionale de transport métropolitain against two class actions, raising:

- Delays occurring in train transportation services. **Pierre Brossoit, Ann-Julie Auclair.**
- Nuisances that plaintiff alleges she will suffer as a result of the train service interruptions due to the construction of a new public transportation network. **Pierre Brossoit, Ann-Julie Auclair.**

Defending directors against proceedings to compel them to join as defendants in an ongoing class action arising from allegedly abusive clauses in contracts entered into by their company. **Élisabeth Laroche.**

Defended insurers against a class action alleging false and misleading information with regards to a draw to win entries in a paintball facility. Prior to the hearing, and after receipt of the insurers' notes and authorities, the plaintiff withdrew the application against the insurers. **Jean-François Lamoureux, Ann-Julie Auclair.**

Defending a municipality against a class action arising from nuisance suffered by neighbours of a waste-disposal site for dry materials and a recycling facility operating within the territory of the municipality. **Frédéric Savard-Scott, Eloïse Robichaud.**

Defending a professional association involved in a class action for the refund of fees demanded by health professionals for treatments that should be covered by the government regime. **Pierre Brossoit, Eloïse Robichaud.**

Professional Liability

Defending the Professional Liability Insurance Fund of the Barreau du Québec against a \$1M claim arising from allegedly defamatory statements by a lawyer

in arbitration proceedings involving the plaintiff. **Marika Douville, Ann-Julie Auclair.**

Defending the Professional Liability Insurance Fund of the Barreau du Québec against a claim for over \$1M arising from alleged malpractice by a lawyer who had acted for the plaintiff in his divorce in 1995 and 1996. **Marika Douville, Ann-Julie Auclair.**

Opposing an application on behalf of the Professional Liability Insurance Fund of the Chambre des notaires du Québec. The applicant was seeking to have a notary added to the case as defendant: we successfully argued that the plaintiffs did not have standing to file such an application, because their claim was based on the alleged invalidity of a will that had yet to be decided. **Marika Douville, Alice Bourgault-Roy.**

Defending a lawyer and the firm in which he was a nominal partner against a claim by a client whose right against its debtor was lost because of prescription, the lawyers having failed to launch proceedings. **Élisabeth Laroche.**

Defending a notary against a claim alleging that she had not adequately verified the capacity of the plaintiffs' father when he sold his immovable. Successfully applying to have an opposing party's lawyer dismissed: we raised the *Code of Professional Conduct of Lawyers* and the *Code of Civil Procedure* to demonstrate that that lawyer could not appear as counsel, mandatary and witness. **Marika Douville.**

Defending a lawyer and the Professional Liability Insurance Fund of the Barreau du Québec against a claim based on the lawyer's severe negligence that precluded the payment of sums from his trust fund to the legitimate creditor. **Normand Laurendeau.**



Defending a law firm against a claim for \$112K in damages arising from a transaction arranged by the firm, which would have deprived the plaintiff of its right to seek compensation after having been compelled to pay compensation. **Marika Douville.**

The Wide Variety of Insurance Cases

Successfully opposing an application for dismissal of an expert report: we convinced the Court that the report was needed to support the insurer's decision to annul a life insurance policy because of misleading declarations by the insured. **Marika Douville.**

Defending a municipality against a claim arising from alleged misrepresentations and negligence on behalf of the municipality, which would have decreased the price paid to the plaintiff by the purchaser of a plot of land. **Fabienne Beauvais.**

Defending the seller and the maker of a washer against a claim by an insurer who had paid compensation after a water damage caused by a defect in the machine. **Marcel-Olivier Nadeau, Jean-Philippe Savoie.**

Defending an insurer against the claim of an insured following the destruction of his house by fire. Key factors: misleading declaration of the price paid by the insured and failure to declare factors that would have influenced the insurer's consent. **Marcel-Olivier Nadeau.**

Defending a construction company and its insurer against a \$381K claim for construction defects and water infiltration. **Jennifer Hansen.**

Defending a municipality against a claim for damages by citizens following the authorization granted by the municipali-

ty to their neighbour for construction work and tree cutting. **Patricia Baram.**

Successfully defended a municipality against injunction proceedings based on the municipality's alleged negligence in failing to block the flow of water to the plaintiff's property. **Pierre Brossoit.**

Defending a company that sold and installed a wood-burning oven that, because of an allegedly defective installation, could have caused a fire that destroyed a residence. **Benoit Byette.**

Defending a construction inspection company against a claim for the reduction of the sale price of a building with latent defects. **Marcel-Olivier Nadeau.**

Successfully defended a municipality against the claim of a bidder whose proposal was set aside after the contract had been awarded, because it had not met the condition related to years of experience. **Jean-François Lamoureux, Justin Beeby.**

Successfully defended a fast food chain against a claim for a \$1.14M finder's fee. **Benoît G. Bourgon, David Paradis.**

Defending a municipality sued after the discovery of construction defects and a fire; the suit alleges that the city had failed to ensure that the construction was in conformity with the permits and plans and with applicable by-laws. **Frédéric Savard-Scott, Stéphanie Beauchamp.**

Defending a company offering "laser tag" games (indoor strategic pursuit) against a claim of close to \$300K by a player injured in a fall. **Marcel-Olivier Nadeau.**

Defending a manufacturer of beams in the context of a \$740K litigation involving allegations of important construction defects. **Jennifer Hansen.**



Defending an insurer in respect of a claim for cyber-theft that will give rise to the first ruling on social-engineering coverage in Canada. **Benoît G. Bourgon, Nick Krnjevic.**

Defending a liability insurer in respect of a claim for coverage for the amounts the insured incurred defending and settling US fax-blasting class actions. These proceedings represent the first occasion that a Quebec court will be ruling on fax-blasting liability insurance coverage issues. **Benoît G. Bourgon, Nick Krnjevic.**

Defending an insurer in a case arising from a diesel fuel spill caused by a truck operated by its insured. In this ongoing case, we successfully raised the litigation privilege to oppose an application to compel our client to disclose an expert report drafted at its request and to force an in-house legal advisor of our client to testify. **Patricia Baram, Nicolas Pfister.**

Issuing an expert opinion on Quebec's sports liability rules for a trial taking place in France, arising from a ski accident suffered in Quebec by a resident of France. **Benoît Chartier.**

Successfully defended a business tenant of a reception hall against a claim by the lessor following a water damage caused by frozen pipes: case resting on the analysis of the lease and insurance policies. **Jeanine Guindi.**

We also continued to hold settlement conferences, which led to mutually satisfactory arrangements. These conferences, which were formally integrated into the *Code of Civil Procedure*, allow lawyers to recommend cost-saving settlements to their clients.

New faces!

Several lawyers have joined our Insurance Law Practice Group since the beginning of 2019.

Stéphanie Beauchamp joined us after spending a few years with a boutique firm, which allowed her to gain precious diversified experience. She was called to the Quebec Bar in 2011.

Marc-Olivier Brouillette was called to the Bar in 2014. He had been a student and articulated at RSS previously. Bit of trivia: he can also be known as a former player of the Alouettes, Montréal's football team, and the Saskatchewan Roughriders. He is still involved with football, as a game analyst for Montréal radio station TSN 690's coverage of the Alouettes' games.

Alice Bourgault-Roy has been a lawyer since 2015. Prior to joining us, she was with the legal department of a regulatory institution where she developed a strong expertise in construction law.

Hugo Bachand-Brunet has been a litigator since his call to the Bar in 2016. His experience before the courts includes a substantial presence with the construction industry. He is now enhancing the firm's presence in our Saint-Jérôme office.

Gabriel Chaloult Lavoie joined RSS as student before articling with us and staying upon his call to the Quebec Bar in 2018. He has pleaded before the Court of Quebec and the Superior Court of Quebec on many occasions.

Nicolas Pfister was called to the Quebec Bar in 2018 after articling with RSS. He focuses his practice on insurance litigation, but is also developing expertise in transportation law.



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Julie Mekhael was also called to the Bar in 2018, but began practising with another firm before joining us earlier this year. She assists with the analysis of cases and with researching and drafting of proceedings, written arguments and legal opinions.

Three paralegals also joined our group: **Caroline Lagacé**, **Stéphanie Bélisle** and **Kris Koudounis**.

And while they're not new faces, we were happy to see **Ariane Légère-Bordeleau** and **Alexandra Kallos** back from their maternity leaves, and resuming their practice, which features fraud cases, major disasters and municipal liability files.

Speakers... writers...

Contributing to the development of the law is of foremost importance to RSS. In addition to having authored and updating major works such as *Residential Insurance Policies, Annotated*, *Commercial Insurance Policies, Annotated*, and *L'assurance-automobile au Québec*, our team regularly shares its skills with clients and fellow lawyers alike.

RSS's Annual Training Course

RSS's Insurance Law Practice Group held its **Annual Training Course** on Tuesday and Wednesday, June 11 and 12. Some 300 clients and contacts joined us for a half-day complimentary session providing information on the latest legal trends in insurance. This event allows for the participants to obtain credits required by the *Chambre de l'assurance de dommages*, the *Bar of Quebec* and the *Chambre des notaires du Québec*. This year's themes and speakers were:

- Recent Cases on the Liability of Individuals, Companies and Insurers in the Con-

struction Industry — **Marcel-Olivier Nadeau**

- The Expert Witness — **Benoît G. Bourgon**
- Condos and Insurance — **Jean-François Lamoureux**
- Recent Developments in Civil Responsibility — **Jean-François Bilodeau**

Get in touch with your contact at RSS if you are interested in joining us for next year!

Courses and conferences

Benoît Chartier attended the annual convention of the *Association des stations de ski du Québec*, that took place on May 28–30. RSS was a partner of this activity. Earlier in May, he had spoken on the impact of the legalization of the recreational use of cannabis carries on product liability, civil liability and, thereby, on home and auto insurance before Quebec's *Chambre de l'assurance de dommages (CHAD)*, a talk that was accredited as a continuing education activity.

Newsletters

RSS publishes numerous complimentary newsletters on insurance. Recent releases include "New Legislative Provisions on Insurance and Condominiums", by **Jean-François Lamoureux** and **Martin Côté**, and "Double representation of the insured: Example of an exception", by **Yves Cousineau**.

We also publish newsletters on other topics, such as business law and labour and employment. To subscribe visit our subscription page at www.rsslex.com/en/abonnement.

Socially and professionally involved

On June 15, 2019, RSS participated in the Montreal leg of the



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annual Défi Entreprises, an event that promotes physical activity, and which raises money for Little Brothers, an organization dedicated to providing support to the elderly and alleviating their isolation. Organized by Jeanine Guindi of the Insurance Law Practice Group, nine of our lawyers were accompanied by five eager clients, who all enjoyed breaking a sweat and getting to know one another in a unique environment, for a good cause.

RSS au féminin

RSS au féminin is an initiative launched within the firm to foster the involvement of all members and staff of the firm, especially professional women. This is achieved through activities addressing the reality and preoccupations of women, and with fund-raising drives to help the needy outside of the firm.

For instance, RSS au féminin held a luncheon-conference during which our colleague **Marilyn Piccini Roy, Ad. E.**, spoke about her 35-year career focused

on estates, wills and trusts, highlighting the issues she had to face.

We also turned our main conference room into a movie theatre for a private screening of **RBG**, a compelling documentary on Justice Ruth Bader Ginsburg of the Supreme Court of the United States, whose career was a long series of major obstacles and challenges.

Recently, RSS au féminin teamed up with the Chez Doris, Women's Shelter Foundation Inc. to provide handbags filled with cosmetics and personal supplies for women seeking shelter at Chez Doris.

The group also connected with Fées Marraines, inviting the firm's women to donate dresses, shoes and handbags to allow girls from less privileged backgrounds to have elegant clothing for their high school graduation parties.

We are proud to count on RSS au féminin as an intrinsic part of the firm's culture.

